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COUNTY OF SACRAMENTO, SACRAMENTO COUNTY SHERIFF'S DEPARTMENT

and JIM COOPER

Exempt from Filing Fees Pursuant to Government Code § 6103

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ESTATE OF DELION JOHNSON, D.J.,
M.J., AND MICHELLE COOPER,

Plaintiff,

v.

CASE NO. 2:23-CV-01304-KJM-JDP

**STIPULATED PROTECTIVE ORDER;
~~PROPOSED~~ ORDER**

Complaint Filed: 7/5/23

COUNTY OF SACRAMENTO,
SACRAMENTO COUNTY SHERIFF'S
DEPARTMENT, JIM COOPER AND DOE
1 to 20,

Defendants.

STIPULATION

A. PURPOSE AND LIMITATION

Defendants believe that the disclosure and discovery activity concerning the materials described in this stipulated protective order is likely to involve production of information for which protection from public disclosure would be warranted. Plaintiffs have not been permitted to view the materials described in this stipulated protective order. The parties acknowledge that this protective order does not confer blanket protections on all disclosures or discovery activity, and that the protection it affords extends only to the limited information or items that are entitled to such protection under Federal Rule of Civil Procedure 26(c). The parties further acknowledge that this stipulated protective order does not entitle any party to file information designated as protected or confidential under seal, where Local Rule 141 sets forth the procedures that must be followed and reflects the standards that will be applied when a party seeks permission from the Court to file material under seal.

B. DEFINITIONS

The following definitions shall apply to this Protective Order:

1. The “Action” shall mean and refer to the above-captioned matter and to all actions now or later consolidated with the Action, and any appeal from the Action and from any other action consolidated at any time under the above-captioned matter, through final judgment.

2. “Documents” or “Confidential Documents” shall mean the documents that Defendants designate as “Confidential” and described in section C.

3. “Confidential” shall mean information designated “Confidential” pursuant to this stipulated protective order. Information designated “Confidential” shall be information that is determined in good faith by the attorneys representing the designating party to be subject to protection pursuant to Federal Rule of Civil Procedure 26(c). Confidential documents, material, and/or information shall be used solely for purposes of litigation. Confidential information shall not be used by the non-designating party for any business or other purpose, unless agreed to in writing by all parties to this action or as authorized by further order of the Court.

4. “Defendants” shall mean the COUNTY OF SACRAMENTO, SACRAMENTO COUNTY SHERIFF’S DEPARTMENT, JIM COOPER, and any other Defendants that may

subsequently be added to this action (for example, “DOE 1 to 20”).

5. “Plaintiffs” shall mean the ESTATE OF DELION JOHNSON, D.J., M.J., and MICHELLE COOPER.

6. “Parties” shall mean Plaintiffs and Defendants, identified above.

C. INFORMATION COVERED

Covered Information:

Pursuant to Local Rule 141.1(c)(1), a description of the information eligible for protection under this stipulated protective order is limited to the following:

1. Medical Records of Delion Johnson
2. Mental Health/Psychiatric Records of Delion Johnson

Particularized Need for Protection:

Pursuant to Local Rule 141.1(c)(2), Defendants assert that there exists a specific, particularized need for protection as to the information covered by this stipulated protective order. Defendants represent to the Court and Plaintiffs that the materials designated to be covered by this stipulated protective order are limited solely to those which would qualify for protection under Federal Rule of Civil Procedure 26(c), and does not include information designated on a blanket or indiscriminate basis. *See, e.g., In Re Roman Catholic Archbishop of Portland*, 661 F.3d 417, 424 (9th Cir. 2011).

Showing of Need for a Protective Order:

Pursuant to Local Rule 141.1(c)(3), protection afforded by this stipulated protective order is for the convenience of Defendants and the Court. Defendants seek to avoid litigation and expenditure of resources concerning a potential motion for protective order pursuant to Federal Rule of Civil Procedure 26(c). The entry of this stipulated protective order may prevent the parties and the Court from conducting the usual document-by-document analysis necessary to obtain protection, in favor of a procedure whereby presumptive protection is afforded based on Defendants’ good faith representations of the need for protection. *See, e.g., Cipollone v. Liggett Group, Inc.*, 785 F.2d 1108, 1122 (3d Cir. 1986) (“[T]he burden of justifying the confidentiality of each and every document sought to be covered by a protective order remains on the party seeking the protective order; any other conclusion would turn Rule 26(c) on its head.”). As a result, production may be made with this stipulated protective order in

1 place and, if necessary, it will permit discrete and narrowed challenges to documents designated for
2 protection.

3 **D. TERMS OF THE PROTECTIVE ORDER**

4 Confidential Documents subject to protection may be designated as “Confidential” and produced
5 subject to this stipulated protective order:

6 1. The Confidential documents shall be used solely in connection with the above-captioned
7 civil case, and in the preparation and trial of the case. The parties do not waive any objections to the
8 admissibility of the documents or portions thereof in future proceedings in this case, including trial.

9 2. The parties will designate the Confidential documents as confidential by affixing a mark
10 labelling them “Confidential.”

11 3. The Confidential documents may only be disclosed to the following persons:

12 a. Plaintiffs, Mark E. Merin and Paul H. Masuhara of the Law Office of Mark E.
13 Merin, and any partners and associates in that office;

14 b. Defendants, Carl L. Fessenden and Suli A. Mastorakos of Porter Scott, and any
15 partners and associates in that office;

16 c. Paralegal, clerical, and secretarial personnel or support staff regularly employed
17 by counsel referred to in subparts (a) and (b) immediately above, including stenographic deposition
18 reporters or videographers retained in connection with this action;

19 d. Court personnel, including stenographic reporters or videographers engaged in
20 proceedings as are necessarily incidental to the preparation for the trial in the civil action;

21 e. Any expert, consultant, or investigator retained in connection with this action;
22 however, such persons must be advised of and abide by this protective order;

23 f. The finder of facts at the time of trial, subject to the court’s rulings on *in limine*
24 motions and objections of counsel; and

25 g. Witnesses during their depositions in this action. If confidential documents are
26 used in the deposition, the documents must be identified as “Confidential” and the portion of the
27 deposition in which the documents are described should also be considered confidential.

28 4. Information covered by this stipulated protective order does not automatically entitle the

1 parties to file such information or documents with the Court under seal. Any request to seal documents
2 is governed by Local Rule 141. If the Confidential documents are filed with any motion or other
3 pleading, a party may seek permission from the Court to file the Confidential Documents under seal
4 according to Local Rule 141. If permission is granted, the Confidential documents will be filed and
5 served in accordance with Local Rule 141.

6 5. The designation of the Confidential documents as “Confidential” and the subsequent
7 production thereof is without prejudice to the right of any party to oppose the admissibility of the
8 Confidential documents or information contained therein.

9 6. Any party or non-party may challenge a Confidential designation at any time. A party or
10 non-party does not waive its right to challenge a confidentiality designation by electing not to mount a
11 challenge promptly after the original designation is disclosed. The challenging party shall initiate the
12 dispute resolution process by providing written notice of each designation it is challenging and
13 describing the basis for each challenge. The parties shall attempt to resolve each challenge in good faith
14 and must begin the process by conferring directly (in person or voice-to-voice dialogue; other forms of
15 communication are not sufficient) within seven (7) days of the date of service of notice. In conferring,
16 the challenging party must explain the basis for its belief that the confidentiality designation was not
17 proper and must give the designating party an opportunity to review the designated material, to
18 reconsider the circumstances, and, if no change in designation is offered, to explain the basis for the
19 chosen designation. A challenging party may proceed to the next stage of the challenge process only if it
20 has engaged in this meet and confer process first or establishes that the designating party is unwilling to
21 participate in the meet and confer process in a timely manner. If the parties cannot resolve a challenge
22 without Court intervention, the designating party shall file and serve a motion for protective order/to
23 retain confidentiality pursuant Federal Rule of Civil Procedure 26(c) and Local Rule 251 within twenty-
24 one (21) days of the initial notice of challenge or within seven (7) days of the parties agreeing that the
25 meet and confer process will not resolve their dispute, whichever is earlier. Failure by the designating
26 party to make such a motion within twenty-one (21) days (or seven (7) days, if applicable) shall
27 automatically waive the “Confidential” designation for each challenged designation. In addition, the
28 challenging party may file a motion challenging a confidentiality designation at any time if there is good

1 cause for doing so. The burden of persuasion in any such challenge proceeding shall be on the
2 designating party, consistent with Federal Rule of Civil Procedure 26(c). Unless the designating party
3 has waived the confidentiality designation by failing to file a motion for protective order/to retain
4 confidentiality as described above, all parties shall continue to afford the material in question the level
5 of protection to which it is entitled under the designating party's designation until the Court rules on the
6 challenge.

7 7. Should the Confidential documents or any information contained therein be disclosed,
8 through inadvertence or otherwise, to any person not authorized to receive it under this stipulated
9 protective order, the disclosing person(s) shall promptly (a) inform counsel for the Defendants of the
10 recipient(s) and the circumstances of the unauthorized disclosure to the relevant producing person(s) and
11 (b) use best efforts to bind the recipient(s) to the terms of this stipulated protective order.

12 8. The Confidential documents shall not lose its confidential status because it was
13 inadvertently or unintentionally disclosed to a person not authorized to receive it under this stipulated
14 protective order.

15 9. The protections conferred by this stipulated protective order cover the information
16 defined above, as well as any information copied from the materials. However, the protections conferred
17 by this stipulated protective order do not cover: (A) any information that is in the public domain at the
18 time of disclosure or which subsequently becomes part of the public domain after its disclosure,
19 including becoming part of the public record through trial or otherwise; and (B) any information known
20 prior to the disclosure or obtained after the disclosure from a source who obtained the information
21 lawfully and under no obligation of confidentiality.

22 10. After the conclusion of this litigation, the Confidential documents will remain
23 confidential. "Conclusion" of this litigation means a termination of the case following a trial, settlement,
24 or dismissal of the action with prejudice for any other reason.

25 11. This stipulated protective order shall remain in full force and effect and shall continue to
26 be binding on all parties and affected persons until this litigation terminates, subject to any subsequent
27 modifications of this stipulated protective order for good cause shown by this Court or any Court having
28 jurisdiction over an appeal of this action. Upon termination of this litigation, the parties agree the

1 stipulated protective order shall continue in force as a private agreement between the parties.

2 12. The parties may request additional records to be subject to this stipulated protective
3 order. If a party believes a document to be produced should be subject to this stipulated protective order,
4 the parties must meet and confer. If there is agreement, the parties shall submit an amendment to this
5 stipulated protective order to identify the additional documents. If the parties cannot agree, the party
6 seeking protection shall file a motion for protective order pursuant to the terms of Local Rule 251.
7 During the pendency of this lawsuit, the Court may (a) make such amendments, modifications, and/or
8 additions to this stipulated protective order as deemed appropriate upon good cause shown; and (b)
9 adjudicate any dispute arising under it.

10 13. During the pendency of this lawsuit, the Court may (a) make such amendments,
11 modifications, and/or additions to this stipulated protective order as deemed appropriate upon good
12 cause shown; and (b) adjudicate any dispute arising under it.

13 IT IS SO STIPULATED.

14
15 Dated: November 16, 2023

PORTER SCOTT
A PROFESSIONAL CORPORATION

17 By /s/Carl L. Fessenden
18 Carl L. Fessenden
19 Suli A. Mastorakos
20 Katie Bonin
Attorneys for Defendants

21 Dated: November 16, 2023

LAW OFFICE OF MARK E. MERIN

22 By /s/Mark E. Merin (Authorized on 11/15/23)
23 Mark E. Merin
24 Paul H. Masuhara
25 Attorneys for Plaintiffs
26
27
28

~~PROPOSED~~ ORDER

The parties' stipulated protective order is GRANTED.

IT IS SO ORDERED.

Dated: November 16, 2023



JEREMY D. PETERSON
UNITED STATES MAGISTRATE JUDGE

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court, Eastern District of California, on [date] in the case of *Estate of Delion Johnson, et al. v. County of Sacramento, et al.*, Case No. 2:23-CV-01304-KJM-JDP. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court, Eastern District of California, for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____